November 24, 2021

Honourable Mary Ng  
Minister of International Trade, Export Promotion, Small Business and Economic Development  
House of Commons,  
Ottawa, Canada K1A 0A6  
Email: mary.ng@parl.gc.ca

Dear Minister Ng:

We are writing regarding Canada’s response to the formal proposal submitted by India and South Africa to the World Trade Organization (WTO) for a temporary waiver of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in relation to products and technologies for the prevention, treatment or containment of COVID-19 (“the TRIPS waiver”) (revised on 21 May 2021 (IP/C/W/669/Rev.1)).

We were hoping that Canada by now would have announced its support for this proposal following recent discussions with other WTO members, and in anticipation of a decision on this matter at the upcoming Ministerial meeting scheduled for November 29th.

As you know, more than 100 WTO Members have expressed support for the TRIPS waiver, and more than 60 WTO Members have agreed to co-sponsor the proposal. The United States has supported the waiver as it applies to SARS-CoV-2 vaccines. However, Canada has to date declined to support the waiver proposal and, along with a few other WTO members, has prevented its adoption by consensus.

Minister, the consequences of a failure to adopt the TRIPS waiver could be millions of lives, both in those countries that have little or no access to necessary products and technologies and in countries such as Canada where residents continue to be vulnerable to new variants of COVID-19. It is widely affirmed by experts, including Canada’s own Chief Public Health Officer, that an effective strategy to limit the spread of COVID-19, to help prevent the emergence of more transmissible or deadly variants, and to protect life and health in all countries is to ensure that vaccines are made widely available in all countries, not just in high-income countries. Prime Minister Trudeau has repeatedly stated this undisputed fact.

The UN Secretary General observed on September 22, 2021 at the COVID-19 Global Summit that high-income countries have administered 61 times more doses per inhabitant than low-income countries and just 3 percent of Africans have been vaccinated. He emphasized that low- and middle-income countries must be able to develop and access health technologies. On October 14, 2021 a number of UN human rights special procedures mandate holders issued a letter to Canada and other States that are refusing to support the TRIPS waiver, emphasizing in their Communiqué that: “States have a collective responsibility to use all available means to facilitate faster access to vaccines, including by introducing a temporary waiver of relevant intellectual property rights under [TRIPS], to ensure that protection of patents concerning the vaccines does not become a barriers to the effective enjoyment of the right to health.”
UN human rights treaty monitoring bodies have also made it clear that a failure to support the TRIPS waiver would violate obligations under ratified international human rights treaties and other international human rights law. These include obligations of international co-operation to ensure rights to health and life, as summarized in the Appendix. While the treaties themselves are not enforceable in Canadian courts, obstructing the adoption of the TRIPS waiver would, in our view, breach Canada’s legal duty to perform these international human rights obligations in good faith, as required under the Vienna Convention on the Law of Treaties. We believe that obstructing the adoption of the TRIPS waiver would also violate the Canadian Charter of Rights and Freedoms, which must be interpreted in accordance with binding international human rights norms. It would violate the rights of vulnerable residents of Canada to life and security of the person under section 7 of the Canadian Charter and the rights of women, the elderly, persons with disabilities, Indigenous Peoples, Black people, other racialized persons, persons experiencing poverty and other groups protected under section 15 that are disproportionately affected.

These breaches of international law and of the Canadian Charter could be the basis of legal challenges in Canadian courts in co-ordination with similar litigation initiatives in several other countries that have failed to support the proposed waiver.

However, we remain confident that Canada and other WTO members will decide to support the TRIPS waiver at the upcoming Ministerial meeting and thereby avoid the need for any judicial review in domestic courts.

Thank you for your consideration of this urgent matter.

Sincerely,

cc:
Hon. David Lametti, Minister of Justice
Hon. Pablo Rodriguez, Minister of Heritage
Hon. Harjit Sajjan, Minister of International Development
Hon. Filomena Tassi, Minister of Public Services and Appropriations
Hon. Jean-Yves Duclos, Minister of Health
Organisations

Action Canada for Sexual Health and Rights
Amnesty International Canada (English Branch)
Canada Without Poverty
Canadian Centre for Policy Alternatives
Canadian Civil Liberties Association
Canadian Federation of Nurses Unions
Canadian Feminist Alliance for International Action (FAFIA)
Canadian Health Coalition
Cancer Alliance, South Africa
Charter Committee On Poverty Issues (CCPI)
Colour of Poverty - Colour of Change
Cooperation Canada
Council of Canadians - Le Conseil des Canadiens
DAWN Canada
ESCR-Net - International Network for Economic, Social and Cultural Rights
Foundation for Integrative AIDS Research (FIAR) (United States)
Friends of MediCare
Global Citizen
Heps Uganda
HIV Legal Clinic Ontario (HALCO)
HIV Legal Network
Indigenous Disability Canada / British Columbia Aboriginal Network on Disability Society
Inter Pares
Madhira Institute (Kenya)
Malawi Health Equity Network (MHEN)
Mouvement Populaire pour la Santé (France)
National Association of Women and the Law
Nova Scotia Health Coalition
OCASl - Ontario Council of Agencies Serving Immigrants
ONE Campaign
Oxfam Canada
Oxfam Québec
Partners In Health Canada
People's Health Movement Canada
People's Health Movement South Africa
Plan International Canada
President of the International Commission of Jurists, Canada
Punjabi Community Health Services
Results Canada
SECTION27 (South Africa)
Social Rights Advocacy Centre
South Asian Legal Clinic of Ontario
The Shift
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